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Paper No. 9

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JUN 30 2003

OFFICE OF PETITIONS

In re Application of :
Guyon, et al. :
Application No. 10/057,849 :
Filed: January 24, 2002 :
Atty. Dkt. No.: 02331-0161 :
(42286-267669) :
Title: METHODS OF IDENTIFYING :
PATTERNS IN BIOLOGICAL SYSTEMS :
AND USES THEREOF :
: DECISION REFUSING
: STATUS UNDER 37 CFR
: 1.47(b)
:
:

This decision is in response to the renewed petition under 37 CFR 1.47(b), filed December 26, 2002.

The petition is DISMISSED.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed January 24, 2002 without an executed oath or declaration and naming Isabelle Guyon and Jason Weston as joint inventors. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed April 8, 2002 requiring, among other items, an executed oath or declaration and a surcharge. A petition under 37 CFR 1.47(b) was filed October 8, 2002 and dismissed December 26, 2002.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

The instant petition fails to satisfy items (1) set forth above. Petitioner has failed to establish that the inventors received the application papers (specification, including claims, drawings, and oath or declaration) and thereafter refused to execute the oath or declaration.

Petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a bona

fide effort has been made to present a complete copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventors.

The evidence submitted herewith has established that the inventors received copies of an international application. Petitioner is required to establish that the inventors received a copy of the complete application (specification, including specification, claims, drawings, and oath or declaration) as filed for the above-identified application and thereafter refused to execute an oath or declaration. See, MPEP 409.03(d).

Any renewed petition should be accompanied by evidence to sufficiently establish that the non-signing inventors were sent a complete copy of the application papers for the instant application for patent and thereafter refused to execute the declaration. A copy of the application papers for the instant application should be sent to the last known address of the non-signing inventors, or, if the non-signing inventors are represented by counsel, to the address of the non-signing inventors' attorney. Petitioner should provide the Office with copies of letters sent to the inventors indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration) for the instant application for patent. If after the inventors receive the application papers for the instant application for patent and requests to execute the oath or declaration are refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile:

(703) 308-6916

By hand:

Office of Petitions
2201 South Clark Place
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By delivery service: U.S. Patent and Trademark Office
(FedEx, UPS, DHL, etc.)

2011 South Clark Place
Customer Window, **Mail Stop Petition**
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.


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Office of Petitions